

United States Attorney's Office  
District of Minnesota

# TESTIFYING IN FEDERAL COURT

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Federal Courthouse, Minneapolis, Minnesota

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**You have been subpoenaed to testify in federal court. The information in this pamphlet may answer your questions about that appearance.**

## **Questions About Being a Witness**

### **Where do I go? And when?**

Your subpoena indicates where and when the proceedings are scheduled to take place. Yet, as the court date draws near, you should hear from an Assistant United States Attorney, a case agent, or a Witness Coordinator as to the exact date and time you must testify. If you have not been contacted at least a week prior to the scheduled court date, call the Witness Coordinator named on the fact sheet that accompanied your subpoena.

Note, at most court proceedings, witnesses are not allowed to enter the courtroom until they are called to testify. Therefore, wait outside the courtroom or in the witness waiting room at the U.S. Attorney's Office until otherwise instructed.

### **How do I get to court?**

If you drive your own vehicle to the courthouse, you will be reimbursed for mileage. See the fact sheet in your subpoena package for current mileage reimbursement rates.

As for parking, your subpoena package contains a map of available parking near the federal court facilities in St. Paul, Minneapolis, Duluth, and Fergus Falls. You will be reimbursed for your parking expenses too if you provide the Witness Coordinator with your receipts. Note, a reimbursement check will be mailed to you within a month of your court appearance.

If you live too far from the courthouse to drive, the Witness Coordinator will make plane reservations or other appropriate travel arrangements for you at government expense. Please contact the Witness Coordinator for this assistance.

### **What if I have to be away from home more than a day?**

If your testimony is expected to extend beyond one day, the Witness Coordinator will reserve a hotel room for you at government expense.

**What if I incur other expenses as a witness?**

The Witness Coordinator will answer your questions regarding reimbursement for childcare and other expenses related to your appearance in court.

**Will I be paid for my time spent as a witness?**

Please see the fact sheet included in your subpoena package for the current witness fees and mileage rates. Subsistence amounts vary depending on the location of the court.

**If you are not a federal government employee or an on-duty officer of the law, you will receive a witness fee for each day you are in court, participating in pretrial interviews, or traveling to fulfill those obligations. Note, however, you will not be reimbursed for lost wages.**

See the Witness Coordinator to complete the fact witness voucher. Then, you will receive your witness payment through the mail within a month.



**What if I am a federal employee?**

Federal employees may not receive fees for testifying in court. However, if the agency that employs you is involved in the case, it will most likely pay your court-related travel expenses. Questions regarding payment of expenses can be addressed by the Witness Coordinator.

**What about my employer?**

Many witnesses question how to approach their employers about their need to testify in court. If requested, the Witness Coordinator will contact your employer to outline your duty under the subpoena. Note, your employers may not retaliate against you for missing work to comply with the subpoena.

### How long will I be in court?

It is impossible to predict how long your testimony will take, so arrange your schedule to permit maximum flexibility. Since you may wait for several hours to testify, bring reading material or other things to occupy your time. Note, a subpoena remains valid until you are excused by the Court.



### What happens if I fail to appear in court?

If you fail to appear in court after being subpoenaed, you may be cited for contempt, and a warrant may be issued for your arrest.

### What if a defense attorney or investigator wants to talk to me?

People who want to talk to you about the case should identify themselves and those they represent. You should also ask to see actual identification.

Attorneys representing a defendant or investigators working on behalf of the defense have the right to ask to speak with you. You, however, have the right to decide whether or not you wish to talk to them.

### What if I am threatened by the defendant or others?

Threatening a federal witness is a federal crime. If anyone threatens you, contact the Assistant United States Attorney assigned to the case, the Witness Coordinator, or the case agent. In emergency situations, call 911 immediately.

### What if I still have questions about appearing in court?

The Witness Coordinator will be happy to answer all of your questions. Just locate his or her name and phone number on the fact sheet that accompanied your subpoena. Or, you may call (612) 664-5600 and ask to speak to one of the Witness Coordinators.

## Terms Often Used in Court

- ◆ **Objection** is the term used when one attorney believes the witness is being asked an improper question by opposing counsel. As a witness, stop talking when you hear a lawyer say “objection.” Then, wait for the judge’s ruling. If the judge **overrules** the objection, you will be directed to answer the question. If the judge decides the question was improper, he/she will **sustain** the objection, and you will not have to answer it.
- ◆ A **Sidebar** takes place when the judge asks the lawyers for both sides to approach the bench to discuss an issue that has arisen. Often, these discussions focus on technical disputes, such as the admissibility of certain evidence or the appropriateness of a particular line of witness questioning. Sidebars take place at the judge’s bench so jurors cannot hear the discussions.



## Your Rights as a Federal Court Witness

- ◆ You have the right to a separate waiting area, away from the defendant and defense witnesses.
- ◆ You have the right to support and assistance in the courtroom, which will be provided by the Assistant U.S. Attorney assigned to the case, the case agent, or the Witness Coordinator.
- ◆ You have the right to assistance with travel and lodging arrangements, to be provided by the Witness Coordinator.
- ◆ You have the right to be reimbursed for some expenses incurred because of your appearance in federal court, as explained in more detail by the Witness Coordinator.

## Tips for Testifying

- ◆ Arrive at the courthouse at the designated time so you have time to talk about the proceedings with the Assistant United States Attorney assigned to the case or the case agent.
- ◆ Always dress comfortably but neatly and cleanly for court. Do not wear hats, shorts, beachwear, etc. Usually, the courtrooms are cool, so you may want to dress in layers; i.e., a jacket or sweater over your shirt. No gum, food, or drinks are allowed in court.



- ◆ Jurors may be present in the public areas around the courtroom, so refrain from talking about the case until you are on the witness stand. Note, too, jurors may observe your behavior outside the courtroom, so act appropriately. Finally, never speak to a juror, not even to say, “Hello.”
- ◆ You must not discuss the case or your testimony with other witnesses while waiting to take the stand.
- ◆ As a witness, you will swear to tell the truth, so tell it. Do not stop to figure out if your answer will help or hurt a particular party in the case. You are expected to be an impartial spokesperson for the facts as you know them.
- ◆ When you present your testimony, first you will be asked questions by the lawyer who called you to the stand. That lawyer is known as an Assistant United States Attorney; and, collectively, the questions are known as “direct examination.” The purpose of direct examination is for you to tell the judge and jury what you know about the case.

- ◆ Next, you will be questioned by opposing counsel (the defense lawyer). Collectively, the questions the defense lawyer asks are called “cross examination.” Those questions provide the defense the opportunity to explore the accuracy of your testimony. Do not get upset if you feel you are being doubted during cross examination.
- ◆ The court reporter must hear all your answers when you are on the witness stand, so do not nod your head for “yes” or “no.” Moreover, do not use slang, such as “yep” or “nope.” Finally, speak clearly and in a voice that can be easily heard.
- ◆ While on the witness stand, you may get nervous and answer a question incorrectly. If that happens, correct yourself immediately. It is better to correct a mistake than to have an attorney discover an error in your testimony. So, if you realize you have misspoken, simply say, “May I correct something I said earlier?”



- ◆ While you are on the witness stand, an attorney may ask if you have talked to anybody about the case. If you have, be honest and say so.
- ◆ After you have completed testifying, you should not discuss your testimony with other witnesses. Moreover, do not ask other witnesses about their testimony. You may talk about the case only after its conclusion.
- ◆ Before leaving the courthouse, remember to visit the Witness Coordinator to fill out a witness voucher so you can receive your witness fee and get reimbursed for allowable expenses. Note, those payments will be mailed to you at a later date.

# The Federal Criminal Justice Process

## Investigation and Arrest

### Detention Hearing

If the government seeks to have an alleged offender detained pending further court action, an Assistant U.S. Attorney offers evidence at a detention hearing, and a judge decides if detention is appropriate.

### Grand Jury or Preliminary Hearing

A grand jury of randomly selected citizens hears prosecutorial evidence in a non-public proceeding to determine if formal charges, called an indictment, should be filed against the accused.

If the alleged offender is arrested before the grand jury concludes its work, a preliminary hearing is held before a judge, who will decide, after hearing from both the prosecution and the defense, if sufficient probable cause exists to have the accused bound over for further grand jury action.

### Arraignment

At arraignment, the court publically states the charges levied against the accused, now called the defendant. The defendant is also advised of his or her rights. Then, the defendant enters a plea of guilty or not guilty.

### Discovery and Plea Negotiations

If the defendant pleads not guilty, the parties prepare for trial. They may request documents, depose witnesses, and motion the court for rulings on admissibility of evidence, among other things. The government may also attempt to negotiate a guilty plea from the defendant.

### Trial

If a plea agreement is not reached, a trial takes place, at which both parties present their cases, and a trial jury determines the verdict.

### Pre-Sentence Investigation and Sentencing

If the defendant is found guilty, the U.S. Probation Office prepares a pre-sentence report for the judge. The report may include statements from the crime victims. The judge then sentences the defendant.

### Appeal

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